THE DEFINITION OF PUBLIC USE IN EMINENT DOMAIN PROVISIONS.—In the conflict between private rights and the state the eminent domain provisions of our constitutions have so often been before the courts that not a single noun, adjective or verb has escaped judicial interpretation; but a recent Illinois case suggests that even yet all the questions involved have not been settled. *Gaylord* v. *Sanitary Dist. of Chicago* (1903) 68 N. E. 522. In deciding that land could not be taken by eminent domain for mills other than public grist mills it was laid down that to constitute a public use the public must be to some extent entitled to use the property taken. On the other hand in allowing the taking of land for ordinary mill purposes it was held in *Olmstead* v. *Camp* (1866) 33 Conn. 532, that the power of eminent domain could be used in aid of any enterprise which would benefit the public. These cases represent a square conflict of authority and definition that runs through the jurisdictions.

In one aspect the Illinois rule seems to be too broad. There should be present an additional element of desire or necessity on the part of the public to use the property. The mere giving to the public a right in connection with the land taken for a private business—a right which under the circumstances it has no use for—would not seem to make the taking one for a public use. In another aspect the very courts that adopt the rule have found it too narrow. Under its terms land could be taken for the right of way of a railroad but not for its machine shops. Yet such taking has been allowed. *Chicago etc. R.R. Co.* v. *Wilson* (1855) 17 Ill. 123. It seems to be enough, then, even under this rule that the land is taken in aid of a business of such a nature that the public has a recognized right to service from it. But while the Illinois rule is unsatisfactory the other is so broad that if logically applied it would seem that there would be but few private enterprises in aid of which property could not be taken by eminent domain. As was pointed out in *Ryerson* v. *Brown* (1877) 35 Mich. 333, every lawful business in a sense confers a public benefit. Even where this broad rule is laid down, however, it seems not to have been applied at the instance of private persons except in aid of such well recognized public services as railroads, telegraph lines, gas and water systems and for the development of some natural resource such as water power, mines and oil wells. The results actually reached though representing a real conflict are not then as far apart as the divergence in definition would indicate. The elements that go to make up the concept of a public use vary so with the economic and social conditions of a community and the presence of some so often renders others superfluous, that general definition seems impracticable. Nor is definition by mere enumeration of what are and what are not held to be public uses of much service in a close case. It is for the Court to examine each exercise of the power by the legislature and satisfy itself that there is in it the elusive element of public use. Certainly neither of the definitions ordinarily given is satisfactory; of the two, that of Illinois is less open to abuse.